

SENATE BILL NO. 228

INTRODUCED BY J. COBB

A BILL FOR AN ACT ENTITLED: "AN ACT REDUCING, FOR CORPORATION LICENSE TAX AND INCOME TAX PURPOSES, THE CARRYBACK PERIOD OF A NET OPERATING LOSS FROM THREE TAX PERIODS TO TWO TAX PERIODS; AMENDING SECTION 15-31-119, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-31-119, MCA, is amended to read:

"15-31-119. Net operating losses -- carryovers and carrybacks. (1) The net operating loss deduction is the aggregate of net operating loss carryovers to the ~~taxable tax~~ period plus the net operating loss carrybacks to the ~~taxable tax~~ period.

(2) The term "net operating loss" means the excess of the deductions allowed by this section over the gross income, with the modifications specified in subsection ~~(6)~~ (5).

~~(3) If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, the loss must be a net operating loss carryback to each of the three taxable periods preceding the taxable period of the loss and must be a net operating loss carryover to each of the five taxable periods following the taxable period of the loss.~~

~~(4)~~(3) A net operating loss for any ~~taxable tax~~ period ending after ~~December 31, 1975~~, [the effective date of this act] in addition to being a net operating loss carryback to each of the ~~three~~ two preceding ~~taxable tax~~ periods, must be a net operating loss carryover to each of the seven ~~taxable tax~~ periods following the ~~taxable tax~~ period of the loss.

~~(5)~~(4) Except as provided in subsection ~~(4)~~ (10), the portion of the loss that must be carried to each of the other ~~taxable tax~~ years must be the excess, if any, of the amount of the loss over the sum of the net income for each of the prior ~~taxable tax~~ periods to which the loss was carried. For purposes of this subsection, the net income for the prior ~~taxable tax~~ period must be computed with the modification specified in subsection ~~(6)(b)~~ (5)(b) and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period or any ~~taxable tax~~ period after the loss period, and the net income ~~so that is~~

1 computed may not be considered to be less than zero.

2 ~~(6)~~(5) The modifications referred to in subsection (2) are as follows:

3 (a) The net operating loss deduction may not be allowed.

4 (b) The deduction for depletion may not exceed the amount that would be allowable if computed under
5 the cost method.

6 (c) Any net operating loss carried over to any ~~taxable tax~~ year must be calculated under the provisions
7 of this section effective for the ~~taxable tax~~ year for which the return claiming the net operating loss carryover is
8 filed.

9 ~~(7)~~(6) A net operating loss deduction may be allowed only with regard to losses attributable to the
10 business carried on within the state of Montana.

11 ~~(8)~~(7) In the case of a merger of corporations, the surviving corporation ~~may is not be~~ allowed a net
12 operating loss deduction for net operating losses sustained by the merged corporations prior to the date of
13 merger. In the case of a consolidation of corporations, the new corporate entity ~~may is not be~~ allowed a
14 deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidation.

15 ~~(9)~~(8) Notwithstanding the provisions of 15-31-531, interest may not be paid with respect to a refund
16 of tax resulting from a net operating loss carryback or carryover.

17 ~~(10)~~(9) The net operating loss deduction must be allowed with respect to ~~taxable tax~~ periods.

18 ~~(11)~~(10) A taxpayer entitled to a carryback period for a net operating loss may elect to forego the entire
19 carryback period. If the election is made, the loss may be carried forward only. The election must be made on
20 or before the date on which the return is due, including any extension of the due date, for the tax year of the net
21 operating loss for which the election is to be in effect. The election is irrevocable for the year made.

22 ~~(12)~~(11) Notwithstanding any other provision of this section, the net operating loss deduction is not
23 allowed in the case of a regulated investment company or a fund of a regulated investment company, as defined
24 in section 851(a) or 851(b) of the Internal Revenue Code of 1986, as that section may be amended or
25 renumbered."

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27 **NEW SECTION. Section 2. Effective date.** [This act] is effective July 1, 2005.

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29 **NEW SECTION. Section 3. Applicability.** [This act] applies to net operating losses incurred for tax
30 periods ending after July 1, 2005.

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